

AMENDED IN ASSEMBLY APRIL 19, 2012

AMENDED IN ASSEMBLY APRIL 10, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 1950**

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**Introduced by Assembly Member Davis**

February 23, 2012

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An act to amend Sections 10085.6 and 10130 of the Business and Professions Code, to amend Section 2944.7 of the Civil Code, to amend Section 27388 of the Government Code, and to amend Section 802 of the Penal Code, relating to business.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1950, as amended, Davis. Prohibited business practices: enforcement.

~~Existing~~

(1) *Existing* law prohibits any person from engaging in the business, acting in the capacity of, advertising or assuming to act as a real estate broker or a real estate salesman without first obtaining a real estate license, as specified.

This bill would additionally prohibit any person from engaging in the business, acting in the capacity of, advertising or assuming to act as a mortgage loan originator without being so licensed or without having obtained a license endorsement, as specified.

~~Existing~~

(2) *Existing* law, until January 1, 2013, prohibits any person who negotiates or arranges residential mortgage loan modifications, as specified, for a fee, from demanding or receiving preperformance compensation, as specified, or requiring security as collateral or taking

a power of attorney from the borrower and makes a violation of that prohibition a misdemeanor subject to specified fines.

Existing law, until January 1, 2013, also prohibits certain conduct by a real estate licensee in connection with a mortgage loan modification or forbearance, including demanding compensation before service is fully performed, taking a lien on property or wage assignment, or taking a power of attorney from the borrower. A violation of those prohibitions is a misdemeanor.

This bill would extend the operation of the above-described provisions indefinitely. By extending the operation of existing crimes, this bill would impose a state-mandated local program.

~~Existing~~

(3) *Existing* law provides that in addition to other recording fees, upon adoption of a resolution by the county board of supervisors, a fee of up to \$3 shall be paid at the time of recording of specified real estate instruments, to be placed in the Real Estate Fraud Prosecution Trust Fund and to be expended to fund programs for the local police and prosecutors to prosecute real estate fraud crimes.

This bill would impose an additional \$25 fee to be paid at the time of recording a notice of default. The fee would be deposited in the State Real Estate Fraud Prosecution Account of the General Fund, which would be created by the bill, to be available, upon appropriation by the Legislature, for purposes of combating real estate fraud crimes, as specified. The bill would make additional technical changes.

~~Existing~~

(4) *Existing* law provides that any person advertising or holding himself or herself out as practicing or entitled to practice law or otherwise practicing law who is not an active member of the State Bar, or any person acting or advertising themselves as a real estate broker, real estate salesperson, or mortgage loan originator without a license or license endorsement, is guilty of a misdemeanor. Existing law requires any person, including a person licensed to practice law, who performs a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation, as specified, to provide a specified notice to the borrower concerning 3rd parties arranging loan modifications. Existing law also prohibits certain conduct by that person including, among other things, demanding compensation before service is fully performed, taking a lien on property or a wage assignment, or taking a power of attorney from the borrower. Existing law provides that a violation of these requirements or prohibitions is a misdemeanor

with specified penalties. Existing law requires that a prosecution for these offenses be commenced within one year of the commission of the offense.

This bill would extend the time to commence a prosecution for these offenses to ~~4~~ 3 years from the discovery of the commission of the offense, or within ~~4~~ 3 years after completion of the offense, whichever is later.

~~The~~

(5) *The* California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~This~~

(6) *This* bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 10085.6 of the Business and Professions
- 2 Code is amended to read:
- 3 10085.6. (a) Notwithstanding any other provision of law, it
- 4 shall be unlawful for any licensee who negotiates, attempts to
- 5 negotiate, arranges, attempts to arrange, or otherwise offers to
- 6 perform a mortgage loan modification or other form of mortgage
- 7 loan forbearance for a fee or other compensation paid by the
- 8 borrower, to do any of the following:
- 9 (1) Claim, demand, charge, collect, or receive any compensation
- 10 until after the licensee has fully performed each and every service
- 11 the licensee contracted to perform or represented that he, she, or
- 12 it would perform.
- 13 (2) Take any wage assignment, any lien of any type on real or
- 14 personal property, or other security to secure the payment of
- 15 compensation.

1 (3) Take any power of attorney from the borrower for any  
2 purpose.

3 (b) A violation of this section by a natural person who is a  
4 licensee is a public offense punishable by a fine not exceeding ten  
5 thousand dollars (\$10,000), by imprisonment in the county jail for  
6 a term not to exceed one year, or by both that fine and  
7 imprisonment, or if by a corporation, the violation is punishable  
8 by a fine not exceeding fifty thousand dollars (\$50,000). These  
9 penalties are cumulative to any other remedies or penalties  
10 provided by law.

11 (c) This section shall apply only to mortgages and deeds of trust  
12 secured by residential real property containing four or fewer  
13 dwelling units.

14 SEC. 2. Section 10130 of the Business and Professions Code  
15 is amended to read:

16 10130. It is unlawful for any person to engage in the business,  
17 act in the capacity of, advertise or assume to act as a real estate  
18 broker or a real estate salesman within this state without first  
19 obtaining a real estate license from the department, or to engage  
20 in the business, act in the capacity of, advertise or assume to act  
21 as a mortgage loan originator within this state without being so  
22 licensed or without having obtained a license endorsement.

23 The commissioner may prefer a complaint for violation of this  
24 section before any court of competent jurisdiction, and the  
25 commissioner and his counsel, deputies or assistants may assist in  
26 presenting the law or facts at the trial.

27 It is the duty of the district attorney of each county in this state  
28 to prosecute all violations of this section in their respective counties  
29 in which the violations occur.

30 SEC. 3. Section 2944.7 of the Civil Code is amended to read:

31 2944.7. (a) Notwithstanding any other provision of law, it  
32 shall be unlawful for any person who negotiates, attempts to  
33 negotiate, arranges, attempts to arrange, or otherwise offers to  
34 perform a mortgage loan modification or other form of mortgage  
35 loan forbearance for a fee or other compensation paid by the  
36 borrower, to do any of the following:

37 (1) Claim, demand, charge, collect, or receive any compensation  
38 until after the person has fully performed each and every service  
39 the person contracted to perform or represented that he or she  
40 would perform.

1 (2) Take any wage assignment, any lien of any type on real or  
2 personal property, or other security to secure the payment of  
3 compensation.

4 (3) Take any power of attorney from the borrower for any  
5 purpose.

6 (b) A violation of this section by a natural person is a public  
7 offense punishable by a fine not exceeding ten thousand dollars  
8 (\$10,000), by imprisonment in the county jail for a term not to  
9 exceed one year, or by both that fine and imprisonment, or if by  
10 a business entity, the violation is punishable by a fine not exceeding  
11 fifty thousand dollars (\$50,000). These penalties are cumulative  
12 to any other remedies or penalties provided by law.

13 (c) Nothing in this section precludes a person, or an agent acting  
14 on that person's behalf, who offers loan modification or other loan  
15 forbearance services for a loan owned or serviced by that person,  
16 from doing any of the following:

17 (1) Collecting principal, interest, or other charges under the  
18 terms of a loan, before the loan is modified, including charges to  
19 establish a new payment schedule for a nondelinquent loan, after  
20 the borrower reduces the unpaid principal balance of that loan for  
21 the express purpose of lowering the monthly payment due under  
22 the terms of the loan.

23 (2) Collecting principal, interest, or other charges under the  
24 terms of a loan, after the loan is modified.

25 (3) Accepting payment from a federal agency in connection  
26 with the federal Making Home Affordable Plan or other federal  
27 plan intended to help borrowers refinance or modify their loans  
28 or otherwise avoid foreclosures.

29 (d) This section shall apply only to mortgages and deeds of trust  
30 secured by residential real property containing four or fewer  
31 dwelling units.

32 SEC. 4. Section 27388 of the Government Code is amended  
33 to read:

34 27388. (a) (1) In addition to any other recording fees specified  
35 in this code, upon the adoption of a resolution by the county board  
36 of supervisors, a fee of up to three dollars (\$3) shall be paid at the  
37 time of recording of every real estate instrument, paper, or notice  
38 required or permitted by law to be recorded within that county,  
39 except those expressly exempted from payment of recording fees.  
40 The fees, after deduction of any actual and necessary administrative

1 costs incurred by the county in carrying out this section, shall be  
2 paid quarterly to the county auditor or director of finance, to be  
3 placed in the Real Estate Fraud Prosecution Trust Fund. The  
4 amount deducted for administrative costs shall not exceed 10  
5 percent of the fees paid pursuant to this section.

6 (2) “Real estate instrument” is defined for the purposes of this  
7 section as a deed of trust, an assignment of deed of trust, a  
8 reconveyance, a request for notice, a notice of default, a substitution  
9 of trustee, a notice of trustee sale, and a notice of rescission or  
10 declaration of default. “Real estate instrument” does not include  
11 any deed, instrument, or writing subject to the imposition of a  
12 documentary transfer tax as defined in Section 11911 of the  
13 Revenue and Taxation Code, or any document required to facilitate  
14 the transfer subject to the documentary transfer tax.

15 (3) An additional fee of twenty-five dollars (\$25) shall be paid  
16 at the time of recording a notice of default pursuant to Section  
17 2924 of the Civil Code. Counties shall transmit the  
18 twenty-five-dollar (\$25) fee, less administrative costs of transmittal,  
19 to the Department of Justice.

20 (b) (1) Money placed in the Real Estate Fraud Prosecution Trust  
21 Fund shall be expended to fund programs to enhance the capacity  
22 of local police and prosecutors to deter, investigate, and prosecute  
23 real estate fraud crimes.

24 (2) After deduction of the actual and necessary administrative  
25 costs referred to in paragraph (1) of subdivision (a), 60 percent of  
26 the funds shall be distributed to district attorneys subject to review  
27 pursuant to subdivision (e), and 40 percent of the funds shall be  
28 distributed to local law enforcement agencies within the county  
29 in accordance with subdivision (d).

30 (3) In those counties where the investigation of real estate fraud  
31 is done exclusively by the district attorney, after deduction of the  
32 actual and necessary administrative costs referred to in paragraph  
33 (1) of subdivision (a), 100 percent of the funds shall be distributed  
34 to the district attorney, subject to review pursuant to subdivision  
35 (e). The funds so distributed shall be expended for the exclusive  
36 purpose of deterring, investigating, and prosecuting real estate  
37 fraud crimes.

38 (c) Moneys transmitted pursuant to paragraph (3) of subdivision  
39 (a) shall be deposited in the State Real Estate Fraud Prosecution  
40 Account of the General Fund, which is hereby created, to be

1 available, upon appropriation by the Legislature, for expenditure  
2 by the department for the purpose of determining, investigating,  
3 and prosecuting real estate fraud crimes.

4 (d) The county auditor or director of finance shall distribute  
5 funds in the Real Estate Fraud Prosecution Trust Fund to eligible  
6 law enforcement agencies within the county pursuant to subdivision  
7 (b), as determined by a Real Estate Fraud Prosecution Trust Fund  
8 Committee composed of the district attorney, the county chief  
9 administrative officer, the chief officer responsible for consumer  
10 protection within the county, and the chief law enforcement officer  
11 of one law enforcement agency receiving funding from the Real  
12 Estate Fraud Prosecution Trust Fund, the latter being selected by  
13 a majority of the other three members of the committee. The chief  
14 law enforcement officer shall be a nonvoting member of the  
15 committee and shall serve a one-year term, which may be renewed.  
16 Members may appoint representatives of their offices to serve on  
17 the committee. If a county lacks a chief officer responsible for  
18 consumer protection, the county board of supervisors may appoint  
19 an appropriate representative to serve on the committee. The  
20 committee shall establish and publish deadlines and written  
21 procedures for local law enforcement agencies within the county  
22 to apply for the use of funds and shall review applications and  
23 make determinations by majority vote as to the award of funds  
24 using the following criteria:

25 (1) Each law enforcement agency that seeks funds shall submit  
26 a written application to the committee setting forth in detail the  
27 agency's proposed use of the funds.

28 (2) In order to qualify for receipt of funds, each law enforcement  
29 agency submitting an application shall provide written evidence  
30 that the agency either:

31 (A) Has a unit, division, or section devoted to the investigation  
32 or prosecution of real estate fraud, or both, and the unit, division,  
33 or section has been in existence for at least one year prior to the  
34 application date.

35 (B) Has on a regular basis, during the three years immediately  
36 preceding the application date, accepted for investigation or  
37 prosecution, or both, and assigned to specific persons employed  
38 by the agency, cases of suspected real estate fraud, and actively  
39 investigated and prosecuted those cases.

1 (3) The committee's determination to award funds to a law  
2 enforcement agency shall be based on, but not be limited to, the  
3 number of real estate fraud cases filed in the prior year, the number  
4 of real estate fraud cases investigated in the prior year, the number  
5 of victims involved in the cases filed, and the total aggregated  
6 monetary loss suffered by victims, including individuals,  
7 associations, institutions, or corporations, as a result of the real  
8 estate fraud cases filed, and those under active investigation by  
9 that law enforcement agency.

10 (4) Each law enforcement agency that, pursuant to this section,  
11 has been awarded funds in the previous year, upon reapplication  
12 for funds to the committee in each successive year, in addition to  
13 any information the committee may require in paragraph (3), shall  
14 be required to submit a detailed accounting of funds received and  
15 expended in the prior year. The accounting shall include the amount  
16 of funds received and expended, the uses to which those funds  
17 were put, including payment of salaries and expenses, purchase  
18 of equipment and supplies, and other expenditures by type, the  
19 number of filed complaints, investigations, arrests, and convictions  
20 that resulted from the expenditure of the funds, and other relevant  
21 information the committee may reasonably require.

22 (e) The county board of supervisors shall annually review the  
23 effectiveness of the district attorney in deterring, investigating,  
24 and prosecuting real estate fraud crimes based upon information  
25 provided by the district attorney in an annual report. The district  
26 attorney shall submit the annual report to the board and to the  
27 Legislative Analyst's Office on or before September 1 of each  
28 year. The Legislative Analyst's Office shall compile the results  
29 and report to the Legislature, detailing both:

30 (1) Facts, based upon, but not limited to, the number of real  
31 estate fraud cases filed in the prior year, the number of real estate  
32 fraud cases investigated in the prior year, the number of victims  
33 involved in the cases filed, the number of convictions obtained in  
34 the prior year, and the total aggregated monetary loss suffered by  
35 victims, including individuals, associations, institutions,  
36 corporations, and other relevant public entities, according to the  
37 number of cases filed, investigations, prosecutions, and convictions  
38 obtained.

39 (2) An accounting of funds received and expended in the prior  
40 year, which shall include the amount of funds received and



1 expended, the uses to which those funds were put, including  
2 payment of salaries and expenses, purchase of equipment and  
3 supplies, and other expenditures by type, the number of filed  
4 complaints, investigations, prosecutions, and convictions that  
5 resulted from the expenditure of funds, and other relevant  
6 information provided at the discretion of the district attorney.

7 (f) A county in which a district attorney fails to submit an annual  
8 report to the Legislative Analyst's Office pursuant to the  
9 requirements of subdivision (e) shall not expend funds held in that  
10 county's Real Estate Fraud Prosecution Trust Fund until the district  
11 attorney has submitted an annual report for the county's most  
12 recent full fiscal year.

13 (g) Annual reports submitted to the Legislative Analyst's Office  
14 pursuant to subdivision (e) shall be made in a standard form and  
15 manner determined by the Legislative Analyst's Office, in  
16 consultation with participating law enforcement agencies.

17 (h) The intent of the Legislature in enacting this section is to  
18 have an impact on real estate fraud involving the largest number  
19 of victims. To the extent possible, an emphasis should be placed  
20 on fraud against individuals whose residences are in danger of, or  
21 are in, foreclosure as defined in subdivision (b) of Section 1695.1  
22 of the Civil Code. Case filing decisions continue to be at the  
23 discretion of the prosecutor.

24 (i) A district attorney's office or a local enforcement agency  
25 that has undertaken investigations and prosecutions that will  
26 continue into a subsequent program year may receive nonexpended  
27 funds from the previous fiscal year subsequent to the annual  
28 submission of information detailing the accounting of funds  
29 received and expended in the prior year.

30 (j) No money collected pursuant to this section shall be expended  
31 to offset a reduction in any other source of funds. Funds from the  
32 Real Estate Fraud Prosecution Trust Fund shall be used only in  
33 connection with criminal investigations or prosecutions involving  
34 recorded real estate documents.

35 SEC. 5. Section 802 of the Penal Code is amended to read:

36 802. (a) Except as provided in subdivision (b), (c), (d), or (e),  
37 prosecution for an offense not punishable by death or imprisonment  
38 in the state prison shall be commenced within one year after  
39 commission of the offense.

(b) Prosecution for a misdemeanor violation of Section 647.6 or former Section 647a committed with or upon a minor under the age of 14 years shall be commenced within three years after commission of the offense.

(c) Prosecution of a misdemeanor violation of Section 729 of the Business and Professions Code shall be commenced within two years after commission of the offense.

(d) Prosecution of a misdemeanor violation of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code shall be commenced as follows:

(1) With respect to Sections 7028.17, 7068.5, and 7068.7 of the Business and Professions Code, within one year of the commission of the offense.

(2) With respect to Sections 7027.1, 7028.1, 7028.15, 7118.4, 7118.5, 7118.6, 7126, 7153, 7156, 7157, 7158, 7159.5 (licensee only), 7159.14 (licensee only), 7161, and 7189 of the Business and Professions Code, within two years of the commission of the offense.

(3) With respect to Sections 7027.3 and 7028.16 of the Business and Professions Code, within three years of the commission of the offense.

(4) With respect to Sections 7028, 7159.5 (nonlicensee only) and 7159.14 (nonlicensee only), of the Business and Professions Code, within four years of the commission of the offense.

(e) Prosecution for a misdemeanor violation of Section 6106.3, 6126, 10085.6, 10139, or 10147.6 of the Business and Professions Code or of Section 2944.6 or 2944.7 of the Civil Code shall be commenced within ~~four~~ *three* years after discovery of the commission of the offense, or within ~~four~~ *three* years after completion of the offense, whichever is later.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

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